

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DANNY ALLEN WING,

11 Petitioner,

12 v.

13 RONALD HAYNES,

14 Respondent.

CASE NO. 3:18-cv-05065-RBL-DWC

ORDER DENYING EXTENSION OF
TIME

15
16 The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate
17 Judge David W. Christel. Currently pending before the Court is Petitioner Danny Allen Wing's
18 Motion for Extension of Time. Dkt. 16. Petitioner requests an additional 120 days to file a Reply
19 to Respondent's Response. However, Petitioner missed his initial deadline to file the Reply and
20 he did not file his Motion for Extension of Time until almost a month after his Petition came
21 ready for consideration. Therefore, the court finds Petitioner has not shown the necessity of an
22 extension and the Court denies his Motion for Extension of Time.
23
24

DISCUSSION

After the Court served Petitioner's habeas Petition, Respondent filed his Response and copies of the relevant state record. Dkts. 10, 12. Petitioner has not filed a Reply to Respondent's Response and the time to do so has lapsed. However, nearly a month after his Petition came ready for consideration, Petitioner filed a Motion for Extension of Time, requesting an additional 120 days to file the Reply. Dkt. 16. He states, as he has in past pleadings, that he is legally blind and needs additional time in order to generate responsive pleadings. *Id.* He states further the time he needs is greater because he needs assistance either from an attorney or from his fellow inmates in drafting his documents because he is unable to read the record or respond to filings due to his poor eyesight. *Id.*

Respondent opposes the extension. Dkt. 17. He notes the Washington Court of Appeals reversed Petitioner's conviction – the conviction he challenges in his current habeas Petition – and, on remand, the Lewis County Superior Court allowed Petitioner one month to decide whether to withdraw his guilty plea. *Id.* at p. 2. Respondent further notes the deadline was imposed on October 13, 2017, and since then, Petitioner has pursued multiple actions to avoid making a decision. *Id.* Indeed, Respondent has included a ruling from the Washington Supreme Court Commissioner, in which the Commissioner notes, “[v]iewing the matter in its entirety, it seems readily apparent that Mr. Wing is engaging in a delaying tactic to avoid the consequences of his own partially successful appeal.” Dkt. 17-1, pp. 4-5.

Pursuant to the local rules, “[a] motion for relief from a deadline should, whenever possible, be filed sufficiently in advance of the deadline to allow the court to rule on the motion prior to the deadline.” LCR 7(j). Petitioner filed his Motion for Extension of Time on May 23, 2018, nearly a month after his Petition came ready for consideration. *See* Dkt. 16. Though he has

1 explained that his eyesight is a burden, he has effectively pursued his case thus far. The Court
2 finds Petitioner has not provided an adequate reason why he missed the deadline to file his
3 optional Reply, and further finds Petitioner has not provided a reason why his Motion for
4 Extension of Time was filed nearly a month after his Petition came ready for consideration.
5 Petitioner has not demonstrated he requires an additional 120 days to file his optional Reply and
6 the Court finds he thus waived the opportunity when he missed his initial deadline. Therefore,
7 the Court denies Petitioner's Motion for Extension of Time (Dkt. 16) and will continue to
8 consider his Petition on the merits.

9 CONCLUSION

10 Having reviewed the Motion for Extension of Time and Response, the Court finds
11 Petitioner has not shown cause for an extension. Therefore, Petitioner's Motion for Extension of
12 Time (Dkt. 16) is denied. The Court will continue to consider Petitioner's Petition on its merits.

13 Dated this 6th day of June, 2018.

14 

15 _____
16 David W. Christel
17 United States Magistrate Judge
18
19
20
21
22
23
24